

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAR 3 2005

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JORGE ANTONIO RAMOS-LERMA,

Defendant - Appellant.

No. 04-1301
(D.C. No. 04-CR-54 WM)
(D. Colorado)

ORDER AND JUDGMENT*

Before **SEYMOUR, HARTZ**, and **McCONNELL**, Circuit Judges.

Defendant Jorge Antonio Ramos-Lerma appeals his sentence after a plea of guilty to the charge of illegal reentry by a previously deported alien, 8 U.S.C.

§ 1326. He was sentenced at the bottom end of the applicable Guideline range.

His sole ground of appeal is that the mandatory Guideline regime under which he

*After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

was sentenced is unconstitutional under *Blakely v. Washington* , 124 S. Ct. 2531(2004), and its progeny.

Defendant preserved this issue below. In a Rule 28(j) letter the Government concedes, as it should, that this case is governed by *United States v. Labastida-Segura* , 396 F.3d 1140 (10th Cir. 2005), and it consents to remand for resentencing.

We REVERSE Defendant's sentence and REMAND to the district court for resentencing.

ENTERED FOR THE COURT

Harris L Hartz
Circuit Judge